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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,565

04/17/2007

Roberto Oliva

OLIVA1

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EXAMINER

YOUNG, RACHEL T

ART UNIT

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3771

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,565	<b>Applicant(s)</b> OLIVA, ROBERTO	
	<b>Examiner</b> RACHEL YOUNG	<b>Art Unit</b> 3771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Amendment***

1. This office action is responsive to the amendment filed on 7/15/10. As directed by the amendment: claims 1 and 4 have been amended, claim 2 has been canceled, and claim 10 has been added. Thus, claims 1 and 3-10 are presently pending in the application.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-4 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knupp et al. (5,396,883) in view of Stangl et al. (2003/0164169) and Thompson (3,732,864).

Regarding claim 1, in fig. 1 and 3 Knupp discloses a first body 12, including an inhaling channel (through 12 passageway, into the page in fig. 3) extending through and along a longitudinal axis of the first body; and a second body (20, C and H) including a receptacle (within 12 and 20), the first body is inserted into the receptacle, the inhaling channel has a lateral outlet 24 inside the receptacle facing perpendicular to the longitudinal axis of the first body, the second body includes at least one reservoir (Fig.

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1, C), which is having an opening (passage of 22) to the receptacle and containing at least one dose of preparation (nebulizer cup C must contain a therapeutic substance of some kind to be nebulized, Col. 1, ll. 10), the reservoir extends along a longitudinal axis substantially perpendicular (from top to bottom of 12) to the longitudinal axis of the first body, and the first body rotates about its own longitudinal axis with respect to the second body (Fig. 3-Fig. 3) between a first position (Fig. 4), at which the lateral outlet of the inhaling channel does not connect with the opening of the reservoir and the reservoir is not connected to the inhaling channel, and a second position (Fig. 3), in which the lateral outlet of the inhaling channel connects the opening of the reservoir and the reservoir is connected to the inhaling channel. Knupp is silent regarding that the medicament is a powder. However, Stangl teaches a powder medicament 6a that can be released as a single dose into an inhalation passageway. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Knupp's medicament with a powder medicament, as taught by Stangl, for the purpose of providing a different medicament to the user depending on their needs. The modified Knupp discloses a second body, but is silent regarding that the second body has a second outlet arranged on the outer surface of one end of the second body. However, in fig. 1 Thompson teaches a body with a through channel (between 32 and 24) having a second outlet (one of the 24 openings) arranged on the outer surface of an end of the body. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Knupp's second body at a right portion of H

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and 20 with a through channel and second outlets at 24 and 32, as taught by Thompson, for the purpose of providing potentially more than one gas to the system.

Regarding claim 3, the modified Knupp discloses an inhaling channel, a first outlet (12 to the left of 14 Knupp) and a second outlet (12 to the right of 14 Knupp) that are arranged approximately at right angles to the longitudinal axis of the first body, the end at which the second outlet is arranged being in contact with an end wall (32 Thompson) of the receptacle that is perpendicular to the longitudinal axis.

Regarding claim 4, the modified Knupp discloses that the through channel (Thompson channel between 24 and 32) has a first outlet (Thompson between 32's bottom and top wall) arranged at the bottom of an end wall 32 of the receptacle, the first outlet of the through channel being arranged in a position in which it faces the second outlet of the inhaling channel at the second position of the first body (fig. 1 Thompson).

Regarding claim 8, the modified Knupp discloses that the second body is provided with a through hole (18 Knupp), which faces the opening of the reservoir.

Regarding claim 9, the modified Knupp discloses that the lateral outlet (Knupp at 24) and the second outlet (right end of 12 Knupp) of the inhaling channel form a single opening that lie between one end and a portion of the lateral surface of the first body.

4. Claims 5-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knupp, Stangl and Thompson, as applied to claim 1 above, in further view of Anderson (6,065,472)

Regarding claim 5, the modified Knupp discloses an inhaling channel, but is silent regarding that the inhaling channel has one first protrusion, which protrudes transversely to the longitudinal axis of the first body from the lateral surface of the inhaling channel toward the inside of said inhaling channel. However, in fig. 4 Anderson teaches that the inhaling channel has at least one first protrusion 26, which protrudes transversely to the longitudinal axis of the first body from the lateral surface of the inhaling channel toward the inside of the inhaling channel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Knupp's inhaling channel with a first protrusion, as taught by Anderson, for the purpose of delivering the powder directly to the user's respiratory tract and not into the cheek cavity of the user (Col. 5, ll. 22-24) and for further deglommerating the powder.

Regarding claim 6, the modified Knupp discloses an inhaling channel, but is silent regarding that the inhaling channel has a second protrusion, which protrudes transversely to the longitudinal axis of the first body from the lateral surface of the inhaling channel toward the inside of said inhaling channel, the second protrusion being spaced with respect to the first protrusion toward the longitudinal axis of the first body and being arranged opposite with respect to a central plane of the inhaling channel. However, Anderson teaches a second protrusion 25, which protrudes transversely to the longitudinal axis of the first body from the lateral surface of the inhaling channel toward the inside of the inhaling channel, the second protrusion being spaced with respect to the first protrusion toward the longitudinal axis of the first body and being arranged opposite with respect to a central plane of the inhaling channel. Therefore, it

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would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Knupp's inhaling channel with a second protrusion, as taught by Anderson, for the purpose of delivering the powder directly to the user's respiratory tract and not into the cheek cavity of the user (Col. 5, ll. 22-24) and for further deglommerating the powder.

Regarding claim 7, the modified Knupp discloses that the first and second protrusions (26, 25 Anderson) have surfaces that are inclined and blended with the lateral surface of the inhaling channel, the surfaces that are inclined and blended with the lateral surface of the inhaling channel being directed toward the second outlet of the inhaling channel (fig. 4 Anderson).

Regarding claim 10, the modified Knupp discloses an inhaling channel, but is silent regarding that the inhaling channel has one first protrusion, which protrudes transversely to the longitudinal axis of the first body from the lateral surface of the inhaling channel toward the inside of said inhaling channel. However, in fig. 4 Anderson teaches that the inhaling channel has at least one first protrusion 26, which protrudes transversely to the longitudinal axis of the first body from the lateral surface of the inhaling channel toward the inside of the inhaling channel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Knupp's inhaling channel with a first protrusion, as taught by Anderson, for the purpose of delivering the powder directly to the user's respiratory tract and not into the cheek cavity of the user (Col. 5, ll. 22-24) and for further deglommerating the powder. The modified Knupp discloses an inhaling channel, but is silent regarding that the

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inhaling channel has a second protrusion, which protrudes transversely to the longitudinal axis of the first body from the lateral surface of the inhaling channel toward the inside of said inhaling channel, the second protrusion being spaced with respect to the first protrusion toward the longitudinal axis of the first body and being arranged opposite with respect to a central plane of the inhaling channel. However, Anderson teaches a second protrusion 25, which protrudes transversely to the longitudinal axis of the first body from the lateral surface of the inhaling channel toward the inside of the inhaling channel, the second protrusion being spaced with respect to the first protrusion toward the longitudinal axis of the first body and being arranged opposite with respect to a central plane of the inhaling channel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Knupp's inhaling channel with a second protrusion, as taught by Anderson, for the purpose of delivering the powder directly to the user's respiratory tract and not into the cheek cavity of the user (Col. 5, ll. 22-24) and for further deglommerating the powder. The modified Knupp discloses that the second body has a through hole (18, Knupp), which faces the opening of the reservoir).

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 3-10 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL YOUNG whose telephone number is (571)270-1481. The examiner can normally be reached on mon-fri 8 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RACHEL T YOUNG/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771